

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA**

MORRIS ROBERSON,

Plaintiff,

v.

CDCR, et al.,

Defendants.

No. 1:22-cv-00833 JLT SAB (PC)

**ORDER ADOPTING FINDINGS AND
RECOMMENDATIONS AND GRANTING
DEFENDANTS' EXHAUSTION MOTION
FOR SUMMARY JUDGMENT**

(Docs. 29, 39)

Morris Roberson seeks to hold the defendants liable for violations of his civil rights pursuant to 42 U.S.C. § 1983. Defendants assert Plaintiff failed to exhaust his available administrative remedies for his claim for failure to intervene and seek summary adjudication on the claim. (Doc. 29.)

The magistrate judge found Defendants “carried their burden to show that there was an available administrative remedy and that Plaintiff did not exhaust that available remedy prior to commencement of the instant lawsuit.” (Doc. 39 at 14.) The magistrate judge determined the evidence—including other submitted and exhausted grievances—showed that “Plaintiff simply failed to assert all of the factual allegations raised in the instant action without excuse.” (*Id.* at 21.) Therefore, the magistrate judge recommended that Defendants’ motion be granted, and Plaintiff’s failure to intervene claim against Defendants Gonzalez, Charles, Loza, Hunter, Rodriguez, and Acebedo be dismissed without prejudice. (*Id.* at 22.)

1 The Court served the Findings and Recommendations on Plaintiff and notified him that
2 any objections were to be filed within 21 days after service and that the failure to file timely
3 objections may result in a waiver of rights on appeal. (Doc. 39 at 21, citing *Wilkerson v. Wheeler*,
4 772 F.3d 834, 839 (9th Cir. 2014).) No objections were filed and the time to do so expired.

5 According to 28 U.S.C. § 636(b)(1)(C) and Local Rule 304, the Court performed a *de*
6 *novo* review of this case. Having carefully reviewed the entire matter, the Court concludes the
7 Findings and Recommendations are supported by the record and by proper analysis. Thus, the
8 Court **ORDERS**:

- 9 1. The Findings and Recommendations issued on December 5, 2023 (Doc. 39) are
10 **ADOPTED** in full.
- 11 2. Defendants' exhaustion motion for summary judgment (Doc. 29) is **GRANTED**.
- 12 3. Plaintiff's failure to intervene claims against Defendants Gonzalez, Charles, Loza,
13 Hunter, Rodriguez, and Acebedo are **DISMISSED** from the action, without
14 prejudice, for failure to exhaust the administrative remedies.
- 15 4. The matter is referred to the magistrate judge for further proceedings.

16
17 IT IS SO ORDERED.

18 Dated: **January 22, 2024**


UNITED STATES DISTRICT JUDGE